

Response Letters sent
by the Regional Board
regarding Sensitive
Watershed Nomination



California Regional Water Quality Control Board

North Coast Region



Winston H. Hickox
Secretary for
Environmental
Protection

William R. Massey, Chairman

Internet Address: <http://www.swrcb.ca.gov/rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone 1-877-721-9203 Office (707) 576-2220 FAX (707) 576-2557

Gray Davis
Governor

July 7, 2003

Director Andrea Tuttle
California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Dear Director Tuttle:

Subject: Elk River Sensitive Watershed Nomination Public Comment Period

In response to your June 26, 2003 FAX, the North Coast Regional Water Quality Control Board postponed consideration of its nomination to the California Board of Forestry and Fire Protection of Elk River as a Sensitive Watershed under section 916.8 of the Forest Practice Rules until August 27, 2003. The postponement was to allow extension of the public comment period. The comment period on the proposed nomination package is now extended until July 25, 2003. This should provide the California Department of Forestry and Fire Protection the desired opportunity to evaluate the nomination package. We look forward to receiving comments to assist in the development in a successful nomination package.

Sincerely,

Susan A. Warner
Executive Officer

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California Regional Water Quality Control Board
North Coast Region
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
(707) 576-2220

**NOTICE OF PUBLIC MEETING
IN THE MATTER OF
NOMINATION OF THE ELK RIVER
AS A SENSITIVE WATERSHED**

Humboldt County

On June 26, 2003, the North Coast Regional Water Quality Control Board postponed consideration of its nomination to the California Board of Forestry and Fire Protection (BOF) of Elk River as a Sensitive Watershed under section 916.8 of the Forest Practice Rules (FPRs). The postponement was to allow extension of the public comment period. The comment period on the proposed nomination package (first made available on June 18, 2003) has been extended to July 25, 2003. -All comments should be submitted in writing, and any oral comments made at the August 27, 2003 meeting should be brief and summarize the previously submitted written comments. Time constraints for oral testimony or comments will be set by Regional Water Board Chair and usually will allow no more than three minutes for interested persons. A timer may be used and speakers are expected to honor the time limits. Where speakers can be grouped by affiliation or interest, such groups will be expected to select a spokesperson and not be repetitive.

Comments should also be restricted to the Regional Water Board's potential action to nominate Elk River per FPRs section 916.8. Please note that the BOF, if it determines that the nomination package is complete, will have a complete public participation effort as part of its deliberations.

The nomination package, along with the attachments, is available on our web site at http://www.swrcb.ca.gov/rwqcb1/agenda/06_2003/06_2003.html. Once at this web site, simply scroll down to Item 15. Copies were also distributed to the Del Norte, Humboldt, and Mendocino libraries. Mr. Nathan Quarles may be contacted for further information at (707) 576-2684.

Susan Warner
Executive Officer

July 7, 2003

Buckeye Conservancy
P.O. Box 5607
Eureka, CA 95502

California Forestry Association
Mark S. Rentz
1215 K Street, Suite 1830
Sacramento, CA 95814

U.S. EPA (W-3-1)
Doug Eberhardt
75 Hawthorne Street
San Francisco, CA 94105

State Water Resources Control Board
Gaylon Lee, Division of Water Quality
P.O. Box 100
Sacramento, CA 95812-0100

California Calltemen's Association
George Gough
1221 H Street
Sacramento, CA 95814-1910

Forest Landowners of California
Dan Weldon
3550 Watt Avenue, Suite 140
Sacramento, CA 95821

Jimmy Smith
Chairman, Humboldt County Board of
Supervisors
825 Fifth Street, Room 111
Eureka, CA 95501

Bill Condon
California Department of Fish and Game
619 Second Street
Eureka, CA 95501

Gerald Marshall
California Geological Survey
2120 Campton Road, Suite D
Eureka, CA 95503

Nathan Quarles
North Coast Regional Water Quality
Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

Mark Stopher
California Department of Fish and Game
601 Locust Street
Redding, CA
Redding, CA 96001

Amedee Bickey
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825-0509

Bill Snyder
CDF - Santa Rosa
135 Ridgway Avenue
Santa Rosa, CA 95405

Jay Harris
California State Parks and Recreation,
North Coast Redwoods District
P.O. Box 2006
Eureka, CA 95502

Sef Murguia
Chairman, Humboldt County Planning
Commission
3015 H Street
Eureka, CA 95501

Frederic & Marcene Barry
P.O. Box 28
Loleta, CA 95551-0028

State of California
P.O. Box 944209
Sacramento, CA 94244

Erling J. & Jo Dellabalma
6780 Berta's Road
Eureka, CA 95503

John Tr. Estevo
7387 Zanes Road
Eureka, CA 95503

Eureka, City of
Department of Public Works
1106 2nd Street
Eureka, CA 95501

Barbara A. Fields
1331 Santa Clara Avenue
Eureka, CA 95501

Forster-Gill Inc.
6065 Annford Circle
San Luis Obispo, CA

John H. & Lois E. Giacomini
6020 Elk River Road
Eureka, CA 95503

Humboldt Bay Harbor Rec.
P.O. Box 1030
Eureka, CA 95502-1030

Charles M & Lynn Lawrence
1159 Kirkby Lane
Eureka, CA 95503

Steven A. & Eunice Lester
33105 Santiago Road
Acton, CA 93510

Joe Blum
National Marine Fisheries Service
1655 Heindon Road
Arcata, CA 95521

Steve Horner
Pacific Lumber Company
P.O. Box 37
Scotia, CA 95565

Francis B. Mathews
c/o Mathews & Kluck
100 M Street
Eureka, CA 95501

Paul Mazzucchi
Private Party
8224 Elk River Road
Eureka, CA 95503

Pacific Gas & Electric
c/o Debbie Fudge
111 Stony Circle
Santa Rosa, CA 95401

Robert D. Prior
c/o Huber & Goodwin
P.O. Box 23
Eureka, CA 95502-0023

William A. Robinson, Jr.
c/o Susan McGinness
2141 Buhne Street
Eureka, CA 95501

Russ Elk River Ranch
655 Bear River Road
Ferndale, CA 95536

Salmon Creek Corp.
P.O. Box 37
Scotia, CA 95565-0037

Jesse S. Umse Sanders
3912 Wellington Street
Eureka, CA 95503

Scotia Pacific Co., LLC
P.O. Box 712
Scotia, CA 95565-0712

Eugene J. Senestraro
510 Valley View Drive
Eureka, CA 95503

Francis M. Shanahan
P.O. Box 368
Eureka, CA 95502-0368

Greg & Lynn Shanahan
P.O. Box 6514
Eureka, CA 95502-6514

Simpson Resource Company
c/o Bernie Bush
P.O. Box 68
Korbel, CA 95550-0068

Slack & Winzler Properties
P.O. Box 549
Eureka, CA 95502-0549

William F. Thorington
c/o Thorington Consulting
1 Robin Hood Lane
Fortuna, CA 95540-3754

Walter R. & Vivian Turner
6562 Elk River Road
Eureka, CA 95503

United States of America
-
-
, CA

Kristi Wrigley-Turner
2550 Wrigley Road
Eureka, CA 95503

No Known Water Purveyors
,

Salmon Forever/Watershed Watch
Joyce King
1658 Ocean Drive
McKinleyville, CA 95519-3827

Environmental Protection Information
Center
Cynthia Elkins
P.O. Box 397
Garberville, CA 95542

Linda Roush, Field Office Manager
Bureau of Land Management, Arcata Field
Office
1695 Heindon Road
Arcata, CA 95521

Adam Forbes, Environmental Services
Manager
Humboldt County, Department of Public
Works
1106 2nd Street

Humboldt Bay Watershed Advisory
Committee
RCAA, Ruth Blyther
904 G Street
Eureka, CA 95501

Humboldt Watershed Council
Ken Miller
1658 Ocean Drive
McKinleyville, CA 95519

Humboldt County Farm Bureau
Katherine Zeimer
5601 South Broadway Avenue
Eureka, CA 95503

Neal Ewald
Simpson Timber Company - Korbel
P.O. Box 68
Korbel, CA 95550

Environmental Protection Information
Center
Rob DiPerna
P.O. Box 397
Garberville, CA 95542

Jarad Carter
Pacific Lumber Company
P.O. Box 37
Scotia, CA 95565

Peter Leipzig
Fisherman's Marketing Assoc.
320 2nd Street, Suite 2B
Eureka, CA 95501

Tim McKay
Northcoast Environmental Center
575 H Street
Arcata, CA 95521-6339

John Clancy
National Marine Fisheries Service
1655 Heindon Road
Arcata, CA 95521



Bill Weaver
Pacific Watershed Associates
P.O. Box 4433
Arcata, CA 95518

Dr. Leslie Reid
Redwood Sciences Lab
1700 Bayview Drive
Arcata, CA 95521

George A. Hollister
P.O. Box 148
Comptche, CA 95427

Gerald D. Cochran
Regional Water Board Member
234 West Sixth Street
Crescent City, CA 95531

Chuck Ciancio
P.O. Box 172
Cuttan, CA 95534

Glenn Franco Simmons
News Director for KINS 980 AM
1101 Marsh Road
Eureka, CA 95501

Jesse Noell
P. O. Box 928
Eureka, CA 95502-0928

William G. Bertain
Attorney at Law
1310 Sixth Street
Eureka, CA 95501

Ralph Kraus
2579 Wrigley Road
Eureka, CA 95503

Larry Preston
CA Dept. of Fish and Game
619 Second Street
Eureka, CA 95501

Scott and Susan Keele
8080 Elk River Road
Eureka, CA 95503

David Lemm
P.O. Box 9066
Eureka, CA 95502

Norm Pastoris
2492 Wrigley Road
Eureka, CA 95503

William R. Massey
Regional Water Board Member
8245 Spring Drive
Forestville, CA 95436

John Marshall
CDF - Fortuna
118 Fortuna Boulevard
Fortuna, CA 95540

Jim Falls
CDF - Fortuna
118 Fortuna Boulevard
Fortuna, CA 95540

Alan and Teresa Cook
Freshwater Working Group
341 Howard Heights
Freshwater, CA 95503

Russian Riverkeeper
Friends of the Russian River
P.O. Box 1335
Healdsburg, CA 95448

Dina Moore
Regional Water Board Member
480 Butte Creek Road
Kneeland, CA 95549

John Corbett
Regional Water Board Member
1801 Ocean Drive
McKinleyville, CA 95519

Susan Warner
P.O. Box 2510
Mendocino, CA 95460

Joseph Brecher
Brecher & Volker LLP
436 14th Street, Suite 1300
Oakland, CA 94612

Wayne Whitlock
Pillsbury, Winthrop LLP
2550 Hanover Street
Palo Alto, CA 94304

Bev Wasson
Regional Water Board Member
P.O. Box 158
Rio Nido, CA 95471

Michael Valentine
CA Department of Fish and Game
1416 Ninth Street
Sacramento, CA 94244-2090

Bruce A. Crane
Dept. of Forestry & Fire Prot.
P.O. Box 944286
Sacramento, CA 94244-2460

John Engbring
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825-0509

Pete Cafferata
CDF - Sacramento
1416 Ninth Street
Sacramento, CA 95814

Trinda Bedrossian
CGS - Sacramento
801 K Street
Sacramento, CA 95814

Edgar B. Washburn
Stoel Rives LLP
111 Sutter Street, Suite 700
San Francisco, CA 94104-4547



Howard E. Whitney
Remediation Testing and Design
P.O. Box 1356
Santa Cruz, CA 95061-1356

Richard Grundy
Regional Water Board Member
950 Wikiup Drive
Santa Rosa, CA 95403

Tom Spittler
CGS - Santa Rosa
135 Ridgway Avenue
Santa Rosa, CA 95405

Jim Branham
Pacific Lumber Company
P.O. Box 37
Scotia, CA 95565

Ruthann Schulte
Pacific Lumber Company
P.O. Box 37
Scotia, CA 95565

Jeff Barrett
Pacific Lumber Company
P.O. Box 37
Scotia, CA 95565

Shawn Harmon
Regional Water Board Member
602 West Mill Street
Ukiah, CA 95482

Richard Glenger
P.O. Box 283
Whitethorn, CA 95589

Robert Zatzkin
140 Springdale Way
Redwood City, CA 94062



California Regional Water Quality Control Board

North Coast Region



Winston H. Hickox
Secretary for
Environmental
Protection

William R. Massey, Chairman

Internet Address: <http://www.swrcb.ca.gov/rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone 1-877-721-9203 Office (707) 576-2220 FAX (707) 576-2557

Gray Davis
Governor

August 11, 2003

Mr. Michael Reichle
Acting State Geologist
California Geological Survey
801 K Street, 12th Floor
Sacramento, CA 95814

Dear Mr. Reichle:

We are in receipt of your letter, dated July 22, 2003, which provides the California Geological Survey's (CGS) initial review to the North Coast Region Water Quality Control Board (Regional Water Board) regarding the Sensitive Watershed Nomination for the Elk River Planning Watersheds package, dated June 18, 2003. As you may be aware, the nomination package was developed by Regional Water Board staff following direction from the Regional Water Board in January 2003.

Your comment letter expresses concern that the "collection and analysis of slope stability data provided in the nomination may not be consistent with the standards of practice set forth by the State Mining and Geology Board and/or the State Board of Geologist and Geophysicists." Your letter also expresses concern regarding some of the definitions used to characterize hillslope conditions, indicating that you believe they are not consistent with existing terminology.

In general, your comments indicate perhaps a misapprehension of what is intended by the proposed nomination package. The nomination is not intended to be a regulatory rulemaking package to adopt or reject as proposed, or as a refined prescriptive package to run "as is" through a rulemaking process. It is intended, as required and appropriate under the Forest Practice Rules at this early stage of the process, to offer "suggested, feasible mitigation measures needed . . . to provide adequate protection for resources" in the affected watershed. (14 CCR section 916.8, 936.8, 956.8 (a)(6).) As required and appropriate at this stage, the nomination presents feasible mitigation measures (not fully developed prescriptive regulations) for the Board of Forestry to consider in addressing the resource protection issues raised by the nomination. In short, we propose an approach for the Board of Forestry to consider, not a package for them to adopt. We expect and hope that this is a first step, not the last, in creating a more effective approach to protecting water quality in this watershed than exists at present under the Forest Practice Rules.

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More specifically regarding your comments, in order to allow Regional Water Board staff to fully understand your concerns, and to allow a review of the nomination package against the standards you reference in your comment, I respectfully request that a copy of the cited standards, with the relevant portion highlighted, be provided as soon as possible. I would appreciate it if you could have them faxed to me at the above number. The timely submittal of the relevant standards will allow Regional Water Board staff to be as responsive to your concerns as possible, and to correct any deficiencies that may be present in the package so that a transparent, reproducible approach can be presented to the California Board of Forestry and Fire Protection in the near future as directed by Regional Water Board.

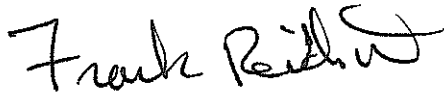
It would also help us be responsive to your concerns if the definitions used in the nomination package that you believe are not consistent with existing terminology could be detailed. This will also allow for a timely correction, if appropriate.

I have a meeting set up with Trinda Bedrossian of your staff, currently scheduled for August 22, 2003, to discuss this and other related matters. If at all possible, I will try to move that meeting forward, in the hope that our agencies can resolve the questions you raise in a timely fashion.

Thank you for your continued interest and support in expanding the knowledge-base and technology relative to protection of beneficial uses of water and timber harvesting activities.

Please call me at (707) 576-2220 if you have any questions or wish to discuss this further.

Sincerely,



Frank Reichmuth
Assistant Executive Officer

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cc: Paul Sweeney, Executive Officer, Board of Geologist and Geophysicists
Darryl Young, Director, Department of Conservation
Gaylon Lee, SWRCB

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California Regional Water Quality Control Board

North Coast Region

William R. Massey, Chairman

Winston H. Hickox
*Secretary for
Environmental
Protection*

Internet Address: <http://www.swrcb.ca.gov/rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone 1-877-721-9203 Office (707) 576-2220 FAX (707) 523-0135



Gray Davis
Governor

August 18, 2003

Mr. Robert Manne, President
The Pacific Lumber Company
P.O. Box 37
Scotia, CA 95565

Mr. Edgar B. Washburn
Stoel Rives LLP
111 Sutter Street
San Francisco, CA 94104

Dear Sirs:

Subject: Elk River Sensitive Watershed Nomination

We received Mr. Manne's comments, dated June 25, 2003, and Mr. Washburn's comments, dated July 25, 2003, regarding the Elk River Sensitive Watershed Nomination package.

Your letters urge the Regional Water Board to reject the Sensitive Watershed Nomination for the Elk River watershed. Your letters further discuss many of your efforts to protect the beneficial uses of water in the Elk River watershed. On behalf of the Regional Water Board, thank you for your efforts.

As you know, the Regional Board has directed staff to prepare and present the Elk River Sensitive Watershed Nomination during their January, 2003, Regional Board meeting. I have transmitted your letter to the Regional Board members so they will have the benefit of your comments.

If you have any further questions, please give me a call at (707) 576-2694.

Sincerely,

Frank Reichmuth
Assistant Executive Officer

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cc: Board Members

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*Secretary for
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5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone 1-877-721-9203 Office (707) 576-2220 FAX (707) 523-0135



Gray Davis
Governor

August 18, 2003

Mr. William E. Snyder, Deputy Director
Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Dear Mr. Snyder:

We thank you for your comments, dated July 25, 2003, on the Elk River Sensitive Watershed Nomination package. As you know, the Regional Water Board directed staff to prepare the nomination at their January 2003 meeting. Following are our specific responses to the issues you raised in your letter.

Your primary position appears to be that the prescriptions under Pacific Lumber's Habitat Conservation Plan are sufficient to protect water quality. Our agency is on record with several nonconcurrences on timber harvest plans in the Elk River watershed on the inadequacy of the HCP's Mass Wasting Avoidance Strategy to protect the beneficial uses of the waters of the State from landslide-generated sediment. The Sensitive Watershed Nomination package suggests an approach to ensure that the appropriate level of analysis, based on the potential impact to beneficial uses of water, is undertaken in high-risk areas. This is not achieved by the HCP's Mass Wasting Avoidance Strategy, which is a broad-based planning tool, not a site-specific characterization process.

Aside from the 1997 data that was utilized in the Sensitive Watershed nomination, there is more recent data documenting the impacts in the Elk River watershed. For example, the assessment work done by Pacific Watersheds Associates (PWA) in the Bridge Creek tributary to Elk River describes significant impacts in the stream channel. We are also aware of recent landslides on sensitive areas of THPs that were harvested and subsequently failed this last winter. The monitoring effort that you mention is underway, both under the HCP and under the enforcement actions taken by the Regional Water Board. However, these have not been in place long enough to evaluate trends in water quality. Until such time that there is sufficient data to better answer the question, we believe the gradational approach outlined in the Elk River Sensitive Watershed Nomination is a more conservative approach. The HCP hillslope strategy lacks many of the components (for example, water quality condition and impacts) that are contained in the Jahnsian approach utilized in our Sensitive Watershed package. The basic concept of the process is the gradational approach, where the prescriptions under the HCP may indeed suffice for many areas, may be too strict for others, or may provide insufficient protection.

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You letter mentions a 2002 survey by the California Geological Survey that found no increase in landsliding in areas harvested under the HCP requirements. Please provide us with the reference so that we may evaluate it.

GIS maps comparing land classifications under the HCP to such classifications in the suggested nomination approach would be useful. Regional Water Board staffs are currently developing a GIS system that may, at some point, be able to make this comparison. However, CDF has an extensive GIS system currently available that potentially could be used to make this comparison. Regional Water Board staff are willing to work with CDF staff in developing the comparison. It is our view this comparison could be made during the review of the nomination package by the Board of Forestry review committee.

The watershed analysis for Elk River has not been agreed upon. Freshwater Creek is the only watershed for which watershed analysis and prescriptions have been approved. We do not know when the watershed analysis for Elk River will be completed. In the interim time period, CDF is allowing six hundred clearcut equivalent acres for annual harvesting in the watershed.

We believe the disturbance index approach as applied under the HCP also has serious shortcomings. It does not reflect the very real variability of conditions across the landscape, and a "one size fits all" approach to land management activities does not recognize the differing landscape response to such activities. The disturbance index has yet to be correlated to water quality impacts and, as such, has not been demonstrated to ensure the protection of the beneficial uses of water.

The current version of the Elk River Sensitive Watershed Nomination suggests a gradational approach to evaluating sensitive hillslope conditions that would be further developed for incorporation into a Sensitive Watershed Rule for Elk River. The Elk River nomination contains an approach to reduce and minimize soil discharges into an already impaired waterbody. While your letter does provide constructive suggestions that may lead to prescriptive rules, we believe that the Board of Forestry reviewing committee is the appropriate forum to further refine the Elk River Sensitive Watershed Nomination. Regional Water Board staff is willing to work with the reviewing committee and CDF staff to further refine the nomination.

If I can be of further assistance, please give me a call.

Sincerely,



Frank Reichmuth
Assistant Executive Officer

NPQ:tmk\SWN CDF Response Letter.doc

cc: Regional Board Members





California Regional Water Quality Control Board

North Coast Region



Winston H. Hickox
Secretary for
Environmental
Protection

William R. Massey, Chairman

Gray Davis
Governor

Internet Address: <http://www.swrcb.ca.gov/rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone 1-877-721-9203 Office (707) 576-2220 FAX (707) 523-0135

August 18, 2003

Mr. John Winzler
S&W Properties
730 7th Street
Eureka, CA 95501

Dear Mr. Winzler:

Subject: Sensitive Water Nomination

Thank you for your letter, dated July 25, 2003, regarding the pending Sensitive Watershed Nomination package that will be submitted to the Regional Water Board later this month. The Regional Board directed staff to prepare the Sensitive Watershed Nomination during our January 2003 Regional Board meeting. As established in the Forest Practice Rules section 916.8 (copy attached), nominations are submitted to the Board of Forestry, along with a draft public notice. A subcommittee designated by the Board of Forestry determines if all the necessary information has been included, and makes a recommendation to the Board of Forestry to either approve or deny the nomination. The Board of Forestry considers the recommendations of the nomination review committee at a public hearing within 60 days of receipt from the committee. This process provides the public, along with the affected landowners, an opportunity to submit comments.

Our nomination is not an attempt to halt all timber harvesting in the Elk River watershed. In view of the extensive evidence of significant cumulative effects to Elk River from land management activities, we suggest the application of protection measures in addition to the forest practice rules, where needed, to determine where management activities should be limited or avoided. It takes a gradational approach, instead of a "one size fits all" approach. Should the Board of Forestry agree with the nomination, they would develop the appropriate forest practice rule to address the issues described in the nomination package.

The TMDL in Elk River is in the development phase and we anticipate it will be considered for final adoption in late summer of 2004. As the TMDL is being developed we will continue to work within the framework of the timber harvest plan review team process with California Department of Forestry to address discharges associated with individual timber harvest plans.

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The sensitive watershed rules (Forest Practice Rule Section 916.8) were developed for watersheds like the Elk River where further timber harvesting may be contributing to ongoing and significant cumulative watershed effects.

There is little doubt that legacy features in the Elk River watersheds are a contributor to the increased sediment load in the river. However, the recent level of timber harvest activities still being carried on by the Pacific Lumber Company may exacerbate watershed conditions. Many legacy features have been around for decades, however some of the major impacts to the river as reported by residents such as filling in of pools, loss of water supplies, and increased flooding are much more recent occurrence. We believe that the prescriptions and rate of harvest that Pacific Lumber Company is using may be adding to the recent and ongoing impacts.

We encourage you to provide your comments directly to the Board of Forestry and their review committee. If you have any questions, please contact me at (707) 576-2694.

Sincerely,



Frank Reichmuth
Assistant Executive Officer

NPQ:tmk\SWN Winzler Response Letter.doc

cc: Regional Board members



Sensitive Watershed Nomination Process Under the Forest Practice Rules

916.8, 936.8, 956.8 Sensitive Watersheds [All Districts]

The Board, at a public hearing, shall determine whether nominated planning watersheds are "sensitive" to further timber operations. Classification of a watershed as "sensitive" shall be supported by substantial evidence that a condition, or conditions, exist(s) where further timber operations within the planning watershed will create a reasonable potential to cause, or contribute to ongoing, significant adverse cumulative effect(s) on the resources identified in 916.8(a)(3) [936.8(a)(3), 956.8(a)(3)], and as set forth in Technical Rule Addendum No. 2 (14 CCR 912.9)[932.9, 952.9] and that mitigation of such significant cumulative effects requires the application of protection measures not required by the Forest Practice Rules. For all planning watersheds classified as "sensitive", the Board shall identify the specific resources which are sensitive to further timber operations and specific mitigation measures that will provide the necessary protection of the sensitive resource(s). A Board finding that a planning watershed is no longer sensitive shall be supported by substantial evidence that such conditions no longer exist. Unless and until a planning watershed(s) is classified as sensitive and any necessary rulemaking completed, the existing rules shall apply:

(a) Nomination process: The Director, local, state, or federal agencies and the public may nominate planning watersheds to the Board and shall provide evidence supporting classification of the watershed as sensitive. The nominator shall discuss the effects that further timber operations will have on the specific resources identified in 14 CCR 916.8(a)(3) [936.8(a)(3), 956.8(a)(3)] which are at risk within the nominated watershed and specify those effects not sufficiently addressed under the forest practice rules and discuss the significance of the effects in light of the condition of the resources in areas adjacent to the planning watershed. Such nominations must be accompanied by the following information, descriptions, documents, or maps as appropriate:

1. Name, approximate size and location of the watershed(s) identified by county, township and range, and name(s) of USGS topographic map(s) on which the planning watershed is found.

2. The name of the higher-order stream, if any, to which the watershed is tributary.

3. Specific resources that are significantly threatened by further timber operations on non-federal timberland in the nominated watershed, including, as appropriate, but not limited to:

A. Fish, aquatic organisms, aquatic habitat, or riparian habitat;

B. Domestic and other water supplies, water quality, other beneficial uses of water existing at the time of nomination or factors related to the stream system and channel morphology.

C. Downstream reservoirs, navigable channels, water diversion and transport facilities, estuaries, and harbors;

D. Wildlife species, or the habitat of species, listed under state or federal law as rare, threatened or endangered, candidate, or sensitive, including discussion of the habitat features threatened by timber operations;

E. Wildlife species with narrow geographic range, low density, low reproductive rates, and highly dependent on localized habitat features, including discussion of the habitat features threatened by timber operations and a discussion of why protective measures are required to prevent a loss of population viability.

4. Natural or management-induced conditions present in the watershed which pose a significant threat to the resources identified in 14 CCR 916.8(a)(3) [936.8(a)(3) and 956.8(a)(3)], above, including, as appropriate, but not limited to:

- A. Steep slopes and easily destabilized soils;
- B. Continuing landslide or soil erosion problems related to past or ongoing land-use activities;
- C. Extensive ground disturbance, particularly associated with roads, skid trails, landings, and watercourse crossings;
- D. Accelerated aggradation, streambank erosion, and channel scouring;
- E. Changes in the habitat or condition of wildlife species identified in 14 CCR 916.8(a)(3) [936.8(a)(3) and 956.8(a)(3)], above.
- F. Accelerated rates of proposed road construction or timber harvesting within a watershed or near streams or springs.

5. Approved Habitat Conservation Plans or other documents approved or under review by public agencies within the nominated watershed which provide for maintenance or improvement over time of management induced conditions within or adjacent to the planning watershed or forest district.

6. Suggested, feasible mitigation measures needed, in addition to current forest practice rules, to provide adequate protection for resources identified in 14 CCR 916.8(a)(3) [936.8(a)(3) and 956.8(a)(3)], above, and to mitigate or avoid new or continuing significant cumulative effects related to timber operations, including, but not limited to, restoration or rehabilitation of degraded resources within any portion of the proposed sensitive watershed.

7. Other information about the watershed that may assist the Board to evaluate the nomination.

8. Literature citations, expert written opinion, and other relevant sources of information and, where possible, copies of information used to complete the nomination.

9. A list of names and mailing addresses of the following:

- A. Landowners of 40 acres or more of lands zoned for timber production in the planning watershed;
- B. Public water purveyors and known private purveyors within the planning watershed;
- C. Commonly known watershed associations within the planning watershed;
- D. Commonly known neighborhood or community associations within the planning watershed;
- E. Chairman, county board of supervisors;
- F. Chairman, county planning commission;
- G. Local manager for any public agency having custodial responsibility for timberlands within the planning watershed; and
- H. District or local representatives for review team agencies.

10. A draft notice for newspaper publication containing the information in (a)(1)-(3), a statement that a public hearing will be scheduled before the Board within 60 days of Board receipt of a nomination forwarded by the committee, and a statement that further information can be obtained from the local Department Ranger Unit Headquarters.

(b) Notice Process: The Board shall mail notice of the nominated watershed, as provided in (a)10, to

the addresses of parties described in 9 A-H and shall publish the provided notice one time in a

newspaper with general circulation in the county containing the planning watershed. Such notice shall be provided following a determination that information contained in the nomination meets the requirements of 14 CCR 916.8(a) [936.8(a) and 956.8(a)], above.

(c) Screening Process: Before consideration by the Board, nominations shall be screened for compliance with the informational requirements by a nominations review committee, which may consist of the appropriate District Technical Advisory Committee or other Board Committee, as determined by the Board. The nominations review committee shall consult with CDF, the appropriate Regional Water Quality Control Board, the Department of Fish and Game, the Division of Mines and Geology, and other(s) as deemed necessary to determine whether the nomination is supported by substantial evidence. The nominations review committee shall then forward a recommendation for approval or denial of the nomination to the Board within 120 days of the date of receipt by the committee, or such longer time provided by the Board. The nominations review committee shall describe its specific reason(s) for recommending approval or denial of the nomination. In the event that the committee forwards a recommendation for approval, it shall describe the substantial evidence which supports nomination, including specific reasons why the current forest practice rules are inadequate to protect the specific resources at risk and shall provide the following information:

1. A list of which resource is threatened and by which timber operations;
2. If possible, performance standard(s) for timber operations that will avoid or mitigate new or continuing significant cumulative effects;
3. Additional information that is needed for evaluating the impacts of proposed timber operations and is to be included in harvesting plans submitted in the planning watershed;
4. On-site mitigation measures in addition to the current forest practice rules, which can be required by the Director to mitigate the impacts of timber operations within the watershed;
5. Offsite mitigation measures that can be applied within or outside of the sensitive watershed area to offset adverse on-site impacts of timber operations. If such mitigation measures are proposed to protect the resource discussed in subdivision (a)(3)(A) and (B), they must occur in the same drainage. Such measures may include, but are not limited to, voluntary mitigation agreements among ownerships.
6. If needed, recommended alternatives to evaluate the implementation and effectiveness of mitigations required under this section.
7. Exemptions for ownerships, emergencies, or land-use classifications that are different than those provided in the current forest practice regulations and that may be applied in the watershed.

(d) Public hearing Process: The Board shall consider the recommendations of the nominations review committee at a public hearing on classification of the planning watershed, which will be held within 60 days of receipt from the committee. The watershed nomination and recommendations of the committee will be made available to the public between the date of receipt by the Board and the public hearing. Recommendations adopted by the Board which have the effect of a regulation shall be processed in accordance with the Administrative Procedures Act (Section 11340. et seq. Gov. Code).